IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1422 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAHYIBEN M. HARIJAN

Versus

PRESIDENT, TALUKA PANCHAYAT

Appearance:

1. Special Civil Application No. 1422 of 1992

MR NR TANDEL for Petitioner No. 1

MR RA MISHRA for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 11/10/2004

ORAL JUDGEMENT

Though called out twice, the learned advocate for the respondents was absent on each occasion. I have, therefore, heard the matter in absence of the respondent

and am passing this order after hearing the learned advocate for the petitioner.

2. In this petition, the petitioner has prayed for a direction requiring the respondent Taluka Panchayat to make the petitioner permanent on the post of Sweeper and pay her regular salary attached to the said post. The petitioner has also challenged the communication dated 4.2.92 in which it is stated by the respondent that the petitioner is correctly paid Rs.300 per month for the service of three hours per day as per resolution dated 18.6.91.

3. The petitioner has in the present petition contended that she was appointed as a Sweeper in the year 1983 and she has continued to work on the said position since then. It is stated that initially, the petitioner was offered a salary of Rs.175 per month as part-time sweeper which was increased from time to time and at the time of filing of the petition, she was paid wages at the rate of Rs.300 per month. The petitioner has contended that she is working in the morning from 8.00 a.m. to 12 noon and thereafter between 2.00 p.m. to 6.00 p.m. She thus contends that she has been working for 8 hours every day and is therefore entitled to receive pay for the said work done by her. The petitioner has also stated that looking to her long and uninterrupted service, she is entitled to be regularized. The petitioner has also produced a letter dated 5th September 1990 written by the President of the Kheda District Panchayat by which the representation of the Bhangi Samaj to regularize the petitioner is forwarded to the Taluka Panchayat and necessary steps are recommended.

4. The respondent has filed affidavit in reply and controverted the averments made by the petitioner. It is denied that the petitioner is working full time. It is suggested that the petitioner is working as a part-time employee and there is one more person senior to the petitioner. It is suggested that the petitioner is being paid wages in terms of the resolution dated 18th June 1991. It is stated that the petitioner is also discharging duties in the office of TDO, Anand. The petitioner has not filed rejoinder controverting the averments made by the respondents in the affidavit in reply.

5. The counsel for the petitioner on the basis of the averments made in the petition has submitted that the petitioner is working 8 hours every day and that looking to her long uninterrupted service, she is entitled to be

regularized on the post of Sweeper.

6. In support of his contention, the counsel has relied on several decisions. Relying upon a judgment and order dated 23rd July 1998 passed by a learned single Judge of this High Court in Special Civil Application No.1269 of 1994 (B.C.Wadhwana v. Director General of Police), the counsel has requested that the petitioner be directed to be regularized in service. In the said judgment, however, one finds that the learned Judge has recorded that the respondents have not filed any reply and there is nothing on record to show that there was no vacancy of full time sweeper in the cadre of Class IV employees for absorption and regularization.

7. Reliance is placed on a decision of this High Court to be found in 2003 (2) GLH (U.J.) 4 (Jayantilal Valjibhai Potadia v. State of Gujarat) wherein the learned single Judge was pleased to observe that when there are instructions issued by the Government specifically as to how the question of regularization of part-timers who had put in more than three years of service was to be considered by the Heads of Departments, the petitioner's termination without considering the case in light of such circulars was not justified. In the present case, the petitioner has not produced any circulars on the basis of which it can be contended that the petitioner has a right to be considered for regularization.

8. Reliance is also placed on a decision of the learned single Judge of this High Court dated 11.9.2003 passed in Special Civil Application No.6594 of 1999 (Induben G. Pagare v. District Education Officer) in which the learned single Judge was pleased to direct that the case of the employee be considered for regularization as per the Government resolutions. It may be noted that no directions were given for regularization and direction was only for consideration in light of the Government resolutions.

9. In the decision dated 17.11.2000 passed in Special Civil Application No.3665 of 1991 (Radhaben Sukhrambhai Joshi v. State of Gujarat) reliance on which is placed by the learned advocate for the petitioner, the learned single Judge was pleased to issue directions for consideration of the case of the petitioner for regularization.

10. In the case of Pravinchandra Girdharlal Pandya v. State of Gujarat, (2004) 6 G.H.J. 448, the learned

single Judge had directed that the employee be considered as regularly appointed in view of the fact that the petitioner therein had worked for 40 years and full time work was taken from him and there was a clear post of regular Peon and the petitioner was not considered but some other person was appointed and in that background, the learned Judge was pleased to issue the above directions.

11. In the present case, though the petitioner has contended that she has been working for 8 hours per day, this aspect has been disputed by the respondent. It is consistently the stand of the respondent that the petitioner is doing the duty for 3 hours every day for which she is being paid wages as per the Government resolution. The respondent's contention that there is yet another person senior to the petitioner has also not been controverted by filing any rejoinder. Thus the assertion of the petitioner that she is working for more than 8 hours a day is a highly debatable question of fact and the petitioner has not produced any material to establish her claim. There is no averment in the petition also that there is any vacancy of full time employee in the cadre of class IV on which the petitioner can be regularized. The respondent on the other hand, has been contending that the work of the petitioner is only for 3 hours a day.

12. In a recent decision of Full Bench of this High Court in the case of Amreli Municipality v. Gujarat Pradesh Municipal Employes Union, 2004 (3) GLR 1841, the Full Bench while considering the power of the Labour Court or the Industrial Tribunal to grant regularization, has examined at length the question of claim of Government servant seeking regularization and has made certain observations to the effect that the Court can exercise power only subject to the recruitment rules, availability of sanctioned posts and limits of budgetary provisions and the person who is selected without following any selection process cannot be entitled to regularization. The Hon'ble Supreme Court in the case of A.Umarani v. Registrar of Cooperative Societies, 2004 AIR SCW 4462 was pleased to observe that when the appointments have been made without notifying the vacancies to Employment Exchange and in violation of mandatory provisions of the Act and the Rules ignoring minimum qualifications, etc. the State Government has no authority to direct regularization for such appointments by issuing orders.

13. In the present petition, the petitioner has not

produced any Government resolutions on the basis of which the petitioner would get a right to be considered for regularization. The direction for regularization therefore cannot be granted in absence of any material supporting such contention and in absence of establishment of the fact that there is permanent vacancy available in the respondent organization for such a relief.

14. The situation, however, is unfortunate and the frustration of the petitioner can be appreciated. She has been working continuously since 1983 and she is receiving only meagre amounts by way of compensation for her relentless hard work. In the circumstances, therefore, it would be appropriate to permit the petitioner to make a representation to the respondent along with all Government resolutions on which she may be in a position to rely upon. If the Government policy and the resolution permit consideration of regularization of such employees, the respondent shall take the same into account and take appropriate steps in accordance with such Government policy.

15. With respect to salary that the petitioner has been receiving also, I find that the respondent has been paying salary only pursuant to the resolution of 18th June 1991. The counsel for the petitioner has stated that even today, the petitioner is receiving only Rs.300 per month. Surely, the Government must have revised the rates at which such part-time employees are to be remunerated and the standard set in the year 1991 cannot be applied today. The respondent is, therefore, directed to pay to the petitioner salary at the rate as revised by the Government from time to time and pay all arrears from the date of the petition also.

16. In the result, by partially allowing the petition, it is directed that if the petitioner makes a representation for regularization along with Government circulars in support of her request, the respondents shall consider the same and dispose of the same in accordance with law within a period of four weeks from the date of receipt of such representation. The respondent is also directed to pay to the petitioner proper wages as per the Government resolutions as revised from time to time and pay her arrears starting from the filing of the petition. The above payments shall be made within four weeks from the date of receipt of a copy of this order. With the above directions, the petition stands disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)